

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT

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**CWP No. 1405 of 2022
Date of decision : 8.2.2022**

Simranjit Kaur

.....Petitioner

Vs.

Educational Tribunal, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. B.S. Patwalia, Advocate, for the petitioner

Ms. Ruchi Sekri, Advocate and
Mr. Deepak Malhotra, Advocate, for the respondents

Rajbir Sehrawat, J. (Oral)

This is a petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for setting aside the order dated 29.10.2021 (Annexure P-1), passed by the Educational Tribunal, Chandigarh, vide which the appeal filed by the petitioner has been dismissed. It is further prayed that the respondents be directed to allow the petitioner to continue to be in service and employment of the respondent-college on the post of Assistant Professor and allow her to continue to work on the said post in pursuance to the selection and appointment of the petitioner on the said post. It is also prayed that respondents be directed to issue appointment order to the petitioner on the post of Assistant Professor in pursuance to the selection and in view the fact that the petitioner had joined services and worked on the post of Assistant Professor. It is also prayed that the respondents be directed to treat the period

of the petitioner from 25.7.2016 till date, as service period and accordingly, to fix her pay and to release the salary for the said period. Stay of the operation of the order dated 29.10.2021 (Annexure P-1) during the pendency of the present petition is also sought by the petitioner.

The brief facts giving rise to the present petition are; that respondent No.4-College had advertised some posts of Assistant Professors; including one post in Education; vide advertisement dated 24.2.2016. Besides the open advertisement, the names were sought from the Employment Exchange, as well. The petitioner was referred by the Employment Exchange. After receipt of the application pursuant to the advertisement and the names from the Employment Exchange, a joint process of selection was carried out by the respondents. The result of the said selection was finalized on 4.5.2016. In the merit list, the petitioner was placed at Serial No.2. Thereafter, as per the assertion of the petitioner, the petitioner was asked to perform the duties. She continued to perform the duties till 8.9.2016. Thereafter, the petitioner was asked verbally not to come to the college.

Aggrieved against the same, the petitioner had preferred CWP No. 4507 of 2017. The same was disposed of by this Court on an agreed statement by the parties that the petitioner could approach the Educational Tribunal. Thereafter, the petitioner approached the Educational Tribunal, Chandigarh. It was prayed before the Educational Tribunal that the respondents be directed to issue the appointment letter to the petitioner and further, to allow her to continue in the service as Assistant Professor because she had been duly selected in the process of selection. The Tribunal rejected that application. Hence, the present petition.

It is submitted by counsel for the petitioner that it is not even in dispute that the petitioner was placed at Serial No.2 in the select list prepared by the Selection Committee. The person at Serial No. 1 had not opted to join pursuant to her selection. Therefore, the petitioner was asked to perform the duties of the post for which she was selected. However, no formal letter of appointment was issued by the respondents. But the fact remains that the petitioner continued to discharge the duties of the post of Assistant Professor, as is clear from the attendance register of the college and also as can be gathered from the other documents, which have been issued by the principal; appreciating the work of the petitioner; and also from the letter of the University deputing the petitioner for counselling sessions. The counsel has further submitted that even the brochure issued by the College for admission process was reflecting the name of the petitioner as the Faculty Member of the college for the session 2016-17. Hence, it is submitted that the petitioner had started her duties pursuant to her selection. Only the formality of issuance of appointment letter was not completed by the respondents. Hence, the respondents should have been directed to issue the appointment letter to the petitioner. The counsel has further submitted that the Tribunal has gone wrong in law in rejecting the claim of the petitioner on the ground that she being only a selected person, had no right to claim appointment, as such. As per the counsel, since the petitioner already stood appointed, therefore, she was not seeking any appointment as such, rather she was praying for issuance of a formal appointment letter to which she was entitled; and qua a post upon which she had worked.

Having heard the counsel for the petitioner, this Court does not

find any substance in the argument of counsel for the petitioner. As per the record, it is not even in dispute that the petitioner participated in the process of selection. She was placed at Serial No.2 in the merit list although the post advertised was only one. As per the record, no candidate out of the select list, is shown to have ever been offered the appointment pursuant to that selection. On the contrary, the respondent college has taken a stand before the Tribunal that the selection process in question was conducted in anticipation of admission of the students for the incoming session. However, since no students were admitted in that particular course; for which the post was meant; therefore, no appointment was made out of the selection panel. It is not even the case of the petitioner that out of the same select list, the respondent college has appointed anybody by leaving out the petitioner despite being higher in merit. Therefore, this Court does not find any wrong in the finding recorded by the Tribunal that the petitioner did not have any right to seek appointment merely on the basis of having been selected in the process of selection. The Hon'ble Supreme Court has held in number of judgments that mere selection does not confer any right upon the selectee to get appointment as such. It is the discretion of the employer to act upon the select list and to decide whether to appoint any person out of that list or not. Unless the respondent employer has acted upon that list and have appointed some person out of the same, any person from the said select list cannot claim, as a matter of right, a right to be appointed to the post for which he/she is selected. The reliance placed by the Tribunal on '**Shankarsan Dash v. Union of India**, (1991) 3 SCC 47' is found by this Court to be well placed.

Although counsel for the petitioner has relied upon certain record

as mentioned above to show that, in fact, she had performed some duties in the college and therefore, she was already appointed, therefore, the respondent college should have been directed to issue her the appointment letter, however, this argument of counsel for the petitioner is not substantiated from the record even. The counsel has relied upon the register of attendance. However, that register is not signed by any competent authority. The counsel has relied upon certain other documents including appreciation certificate issued by the principal and some deputation to the counseling session issued by the University. However, there is nothing on record to show that the petitioner was ever appointed or even asked to perform these duties by the appointing authority of the post, which is the Governing Body of the college. There is no document on record showing even remotely, that the appointing authority i.e. Managing Committee of the college, ever asked the petitioner to perform the duties. In that situation, even if the document which the petitioner is relying upon are correct, then also, she could have at the best claimed the salary for the period for which she actually performed the duty, if at all she performed. But she cannot lay her claim to the appointment against the wishes of the appointing authority. However, the respondent college has denied altogether even qua performance of duties. It is the stand of the respondent college that the documents being relied upon by the petitioner were created by herself only by taking advantage of her temporary employment with the college during the previous years.

In view of the above, even the fact that the petitioner ever performed the duties on being asked by the Managing Committee/Appointing Authority for the post is not substantiated from the record. Still, the counsel

for the petitioner submits that when the petitioner was verbally asked not to come to the college, she should have been issued, at least, show cause notice so as to comply with the principles of natural justice. However, even this argument is negated by the facts mentioned above. When there is nothing on record to show that the appointing authority ever asked the petitioner to perform any duties, then there is no question of asking her verbally not to come to attend the said duties. Therefore, the question of issuing any notice to the petitioner before stopping her to come to the college, does not arise at all.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

8.2.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No